

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID A. STEBBINS,
Plaintiff,

v.

KARL POLANO, et al.,
Defendants.

Case No. 21-cv-04184-JSW

**ORDER GRANTING MOTION FOR
LEAVE TO FILE SECOND AMENDED
COMPLAINT; DISCHARGING
ORDER TO SHOW CAUSE**

Re: Dkt. Nos. 34, 38, 45

Now before the Court is the motion for leave to file a second amended complaint by Plaintiff David Stebbins ("Plaintiff"). The Court has considered Plaintiff's motion, relevant legal authority, and the record in the case, and it finds this matter suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). The Court GRANTS Plaintiff's motion for leave to amend.

BACKGROUND

In this action, Plaintiff alleges copyright infringement claims against several Defendants. Plaintiff seeks leave to file a second amended complaint. In the proposed complaint, Plaintiff seeks to add a claim of copyright infringement. Specifically, Plaintiff alleges that on August 28, 2021, he received notice that Defendant Karl Polano posted a stream to his Twitch channel that contained a clip of Plaintiff's allegedly copyrighted material. Plaintiff now seeks leave to file an amended complaint adding this new instance of copyright infringement. Plaintiff also filed a motion to amend his complaint to update defendant John Doe #1's identity.

ANALYSIS

A. The Court Grants Plaintiff's Request to Amend the Complaint.

Plaintiff styles his motion as request for leave to amend, which is governed by Federal Rule of Civil Procedure 15(a). Rule 15(a) provides for amendment of the pleadings to set forth

allegations concerning events which took place before the original pleading was filed. Where the plaintiff seeks to supplement the pleadings to allege relevant facts occurring after the original pleading was filed, Rule 15(d) governs. Fed. R. Civ. P. 15(d); *Keith v. Volpe*, 858 F.2d 467, 473-464 (9th Cir. 1988). Rule 15(d) also governs requests to supplement the pleadings to introduce a claim not alleged in the original complaint based on facts not in existence when the original complaint was filed. *Cabrera v. City of Huntington Park*, 159 F.3d 374, 382 (9th Cir. 1998). Here, Plaintiff's proposed additional copyright infringement claim is based on conduct that occurred after June 2, 2021, the date Plaintiff commenced this action. The Court therefore construes Plaintiff's motion to amend to add the additional infringement claim as a motion to supplement under Rule 15(d).

Rule 15(d) states that "[o]n motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." Fed. R. Civ. Proc. 15(d). "While leave to permit supplemental pleading is 'favored,' it cannot be used to introduce a 'separate, distinct and new cause of action.'" *Planned Parenthood of S. Ariz. v. Neely*, 130 F.3d 400, 402 (9th Cir.1997) (quoting *Keith*, 858 F.2d at 473).

Here, the additional infringement claim Plaintiff seeks to add is sufficiently related to the claims in the original complaint. The Court finds that interests of judicial efficiency weigh in favor of granting Plaintiff's request to supplement. Moreover, at this stage of the proceedings, the Court finds little prejudice to the opposing parties in permitting Plaintiff's request to supplement. Accordingly, the Court GRANTS Plaintiff's request to file a supplemental complaint alleging the additional claim of copyright infringement and the facts relevant to that claim.

The Court also GRANTS Plaintiff's request to amend the complaint to designate the identity of "Doe" Defendant number 1. (*See* Dkt. No. 34.)

B. The Court Discharges the Order to Show Cause Regarding Plaintiff's In Forma Pauperis Status.

On September 9, 2021, the Court ordered Plaintiff to show cause why his *in forma pauperis* status should not be revoked. Plaintiff filed a response to the Court's order on September

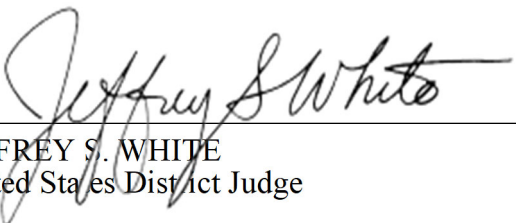
1 15, 2021. The Court has considered Plaintiff's response and finds good cause not to revoke
2 Plaintiff's *in forma pauperis* status at this time. Accordingly, the Court HEREBY DISCHARGES
3 the Order to Show Cause.

4 **CONCLUSION**

5 Plaintiff's request is GRANTED. By September 30, 2021, Plaintiff may file a Second
6 Amended Complaint asserting the additional claim against Defendant Polano and adding the
7 identity of the doe Defendant.

8 **IT IS SO ORDERED.**

9 Dated: September 16, 2021

10 
11 JEFFREY S. WHITE
12 United States District Judge

United States District Court
Northern District of California